

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201510930	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/26/2015 7:20 PM	Location of Incident: § 87(2)(b); 28th Precinct Stationhouse	Precinct: 28	18 Mo. SOL 6/26/2017	EO SOL 6/26/2017	
Date/Time CV Reported Thu, 12/31/2015 12:29 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 12/31/2015 12:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Marc Hummel	23029	950604	028 PCT
2. POM Jeremiah Wilson	08655	943962	028 PCT
3. LT Thomas Kelly	00000	936854	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Frank Arnedos	1377	934417	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeremiah Wilson	Force: PO Jeremiah Wilson used physical force against § 87(2)(b) on § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.POM Marc Hummel	Force: PO Marc Hummel used a chokehold against § 87(2)(b) on § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.POM Marc Hummel	Force: PO Marc Hummel restricted § 87(2)(b)'s breathing on § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.POM Marc Hummel	Force: PO Marc Hummel hit § 87(2)(b) against a vehicle on § 87(2)(b) in Manhattan.	§ 87(2)(b)
E.POM Marc Hummel	Abuse: PO Marc Hummel did not process § 87(2)(b)'s complaint regarding an officer at the 28th Precinct Stationhouse.	§ 87(2)(b)
F.POM Jeremiah Wilson	Abuse: PO Jeremiah Wilson did not process § 87(2)(b)'s complaint regarding an officer at the 28th Precinct Stationhouse.	§ 87(2)(b)
G.LT Thomas Kelly	Abuse: Lieutenant Thomas Kelly did not process § 87(2)(b)'s complaint regarding officers at the 28th Precinct Stationhouse.	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed the following CCRB complaint as a walk-in on December 31, 2015 (Board Review 01; 11). On December 26, 2015, at approximately 7:15 p.m., § 87(2)(b) heard a gunshot coming from outside of his apartment, located § 87(2)(b) in Manhattan. § 87(2)(b) left his apartment to check on his niece, who had been walking her dog. A crowd of people were outside. PO Marc Hummel and PO Jeremiah Wilson of the 28<sup>th</sup> Precinct responded to the location and instructed those who did not live there to disperse. § 87(2)(b) argued that he did live at the location. PO Hummel then handcuffed § 87(2)(b) and PO Wilson allegedly pushed § 87(2)(b) toward the RMP (**Allegation A**). PO Hummel allegedly put both hands around § 87(2)(b)'s neck, restricting his breathing, and slammed § 87(2)(b)'s face onto the RMP (**Allegations B, C, and D**).

§ 87(2)(b) was transported to the 28<sup>th</sup> Precinct Stationhouse. He allegedly asked PO Hummel, PO Wilson, and Lt Thomas Kelly of the 28<sup>th</sup> Precinct, who was behind the desk, how he could file a complaint against officers. All three officers refused to process his complaint and no officer mentioned the CCRB to § 87(2)(b) (**Allegations E, F, and G**). § 87(2)(b) was released with a summons for § 87(2)(b) (Board Review 02). He sustained minor pain to his wrists which did not require medical attention. Video footage was not obtained for this case, as there were no surveillance cameras at the location.

This case went beyond the 90-day benchmark by approximately three weeks because five of Lt Kelly's scheduled interviews were cancelled by his command.

### Mediation, Civil and Criminal Histories

- Mediation was presented to § 87(2)(b) on December 31, 2015. § 87(2)(b) accepted mediation, however, his case was deemed unsuitable for mediation due to allegations of a chokehold and restricted breathing.
- As of January 19, 2016, § 87(2)(b) had not filed a Notice of Claim with the city of New York (Board Review 03).
- § 87(2)(a) 160.50, § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 05).
- PO Wilson has been a member of the NYPD for nine years. He has had six previous CCRB cases involving seven allegations, none of which were substantiated. Two of the past allegations were allegations of force, one of which was exonerated, the other of which was closed as complainant unavailable.
- PO Hummel has been a member of the NYPD for four years. He has had four previous CCRB cases involving nine allegations, none of which were substantiated. Two of the past allegations were allegations of force, one of which was unsubstantiated, the other of which was closed as complainant unavailable.
- Lt Kelly has been a member of the NYPD for 11 years. He has had four previous CCRB cases involving seven allegations, one of which was substantiated. The substantiated allegation against Lt Kelly was from case number 201402848, and was an allegation of an entry and search. Lt Kelly received formalized training in regards § 87(2)(g)

### Findings and Recommendations

#### Explanation of Subject Officer Identification

§ 87(2)(b) alleged that while at the 28<sup>th</sup> Precinct Stationhouse, prior to being placed in a holding cell, he asked an officer standing behind the desk how he could file a complaint against officers. § 87(2)(b)

described this officer as a white male who may have been in his 50s, with an average build, wearing a white uniform shirt.

Lt Kelly was the only lieutenant listed on the roll call (Board Review 06). Although he was not assigned to the desk, he confirmed that he was at the desk when § 87(2)(b) was brought to the desk, prior to being placed in a holding cell (Board Review 17). Although Lt Kelly is only § 87(2)(b)-old, his officer photograph shows that he looks older than § 87(2)(b) and has an average build (Board Review 07). § 87(2)(g)

### **Allegations Not Pleaded**

- **Threat of arrest** – § 87(2)(b) alleged that while he was standing outside of § 87(2)(b) amongst a crowd of people, PO Wilson stated to the crowd members that if they did not live there they were loitering, and that if anyone was outside when he returned, they would be arrested for loitering. The officers then clarified that only those who did not live at the location had to leave. § 87(2)(b) lived at § 87(2)(b) and was therefore exempt from the threat. Additionally, § 87(2)(b) was unable to provide the names or contact information of any of the individuals in the crowd. § 87(2)(g)

**Allegation A – Force: PO Jeremiah Wilson used physical force against § 87(2)(b) on § 87(2)(b) in Manhattan.**

**Allegation B – Force: PO Marc Hummel used a chokehold against § 87(2)(b) on § 87(2)(b) in Manhattan.**

**Allegation C – Force: PO Marc Hummel restricted § 87(2)(b)'s breathing on § 87(2)(b) in Manhattan.**

**Allegation D – Force: PO Marc Hummel hit § 87(2)(b) against a vehicle on § 87(2)(b) in Manhattan.**

§ 87(2)(b) provided a sworn statement to the CCRB on December 31, 2015, and provided additional information over the phone on January 14, 2016 (Board Review 11; 13). § 87(2)(b) stated that after being handcuffed, PO Wilson grabbed his arms and pushed or dragged § 87(2)(b) from the stoop to the RMP. § 87(2)(b) stated that he walked compliantly with the officers, did not resist in any way, and tried to keep his arms still while walking, as moving them caused pain to his wrists due to the handcuffs. § 87(2)(b) alleged that once by the RMP, PO Hummel grabbed § 87(2)(b)'s throat with his right hand, and the back of § 87(2)(b)'s neck with his left hand. PO Hummel yelled at § 87(2)(b) to stop resisting, and with both hands still on § 87(2)(b)'s neck, slammed his face onto the RMP. PO Hummel held § 87(2)(b)'s face against the vehicle with one hand still on § 87(2)(b)'s neck, and used his other hand to open the RMP door. § 87(2)(b) estimated that PO Hummel held onto his throat for approximately five seconds, restricting his breathing and his ability to speak. § 87(2)(b) denied resisting at any point. He stated that other officers may have been up the street, but that none were in the immediate vicinity and none got involved in his arrest. § 87(2)(b) sustained wrist pain from the handcuffs but did not sustain any further injuries and did not obtain medical attention.

§ 87(2)(b) believed that some bystanders may have recorded the incident. He did not know any of the witnesses' names or contact information. § 87(2)(b)'s mother, § 87(2)(b) provided an unsworn phone statement to the CCRB and confirmed that she did not witness the incident (Board Review 12).

PO Wilson stated that when he or PO Hummel attempted to handcuff § 87(2)(b) became belligerent and flailed his arms to avoid being cuffed (Board Review 15). The officers grabbed § 87(2)(b)'s wrists and brought his arms behind his back. PO Wilson believed that both he and PO Hummel grabbed § 87(2)(b)'s wrists, and that it took approximately one minute to handcuff § 87(2)(b). § 87(2)(b) continued to move his arms once cuffed. He did not compliantly walk to the RMP, and so the officers each held onto § 87(2)(b)'s elbows and both pulled and pushed § 87(2)(b) to the RMP. § 87(2)(b) then stiffened his body, refusing to go into the RMP, yelled something to the effect of, "I'm being choked!" and told people to record

the incident. § 87(2)(b) eventually got into the RMP on his own accord. PO Wilson did not know why § 87(2)(b) stated he was being choked. He denied choking § 87(2)(b) and had no recollection of PO Hummel having made contact with § 87(2)(b)'s neck or throat at any point. Other than § 87(2)(b) yelling that he was being choked, there was no indication that his breathing was restricted. PO Wilson did not recall seeing PO Hummel make contact with any part of § 87(2)(b)'s body other than his arms and wrists, and did not recall § 87(2)(b)'s face ever making contact with the RMP. PO Wilson added that § 87(2)(b)'s behavior did not cause PO Wilson to fear for his safety to such a degree that would require PO Wilson to use any force other than the necessary force to place him under arrest.

PO Hummel stated that although § 87(2)(b) was verbally hostile and disorderly, he was physically compliant with being handcuffed, walking to the RMP, and going into the RMP (Board Review 14). PO Hummel denied any officer pulling or pushing § 87(2)(b) to the RMP. He acknowledged that he may have touched § 87(2)(b)'s shoulder or the back of his neck or head when guiding him into the RMP, but denied using any force against § 87(2)(b). PO Hummel did not hear § 87(2)(b) express that his breathing was restricted. Both officers stated that they did not observe injuries on § 87(2)(b) and did not hear him complain of injuries. Nevertheless, they asked him if he wanted medical attention. § 87(2)(b) refused.

PO Wilson's memo book stated that "force was used to restrain and place § 87(2)(b) into [the] vehicle" (Board Review 08). PO Hummel, who issued § 87(2)(b) the summons, made no mention in his memo book or on the summons of force having been used, and made no mention of § 87(2)(b) being physically in compliant (Board Review 02; 09).

§ 87(2)(g)

**Allegation E – Abuse of Authority: PO Marc Hummel did not process § 87(2)(b)'s complaint regarding an officer at the 28th Precinct Stationhouse.**

**Allegation F – Abuse of Authority: PO Jeremiah Wilson did not process § 87(2)(b)'s complaint regarding an officer at the 28th Precinct Stationhouse.**

**Allegation G – Abuse of Authority: Lieutenant Thomas Kelly did not process § 87(2)(b)'s complaint regarding an officer at the 28th Precinct Stationhouse.**

§ 87(2)(b) stated that throughout the incident, he repeatedly asked PO Hummel how he could file a complaint against officers. Though § 87(2)(b) did not specify all of the locations in which he asked PO Hummel about filing a complaint, he stated that while at the 28<sup>th</sup> Precinct Stationhouse, PO Hummel eventually told § 87(2)(b) that they did not take complaints at the stationhouse and that he would have to go downtown to make a complaint. He may have also told § 87(2)(b) that he could call 311 to file a complaint. § 87(2)(b) asked PO Hummel and PO Wilson for the location downtown where he could file a complaint. PO Hummel did not respond to § 87(2)(b) and PO Wilson told § 87(2)(b) he did not have to tell him the location and that § 87(2)(b) could figure it out for himself. While standing near the desk, § 87(2)(b) asked an officer, identified via the investigation as Lt Kelly, how he could file a complaint. In his sworn statement, § 87(2)(b) stated that Lt Kelly did not respond and continued chatting with other people near the desk. In a follow-up call, § 87(2)(b) confirmed that Lt Kelly heard his question but dismissed § 87(2)(b) stating, "Have a nice day." No officer took § 87(2)(b)'s complaint or made any mention to him of the CCRB.

PO Hummel, PO Wilson, and Lt Kelly stated that § 87(2)(b) did not ask them if or how he could file a complaint against officers (Board Review 17). They did not hear him ask any other officer this. PO Wilson recounted that while transporting § 87(2)(b) to the stationhouse, § 87(2)(b) stated that he was going to contact or file a complaint with IAB. PO Hummel wrote in his memo book that § 87(2)(b) stated, "I'm suing you. I will be at one PP [Police Plaza] on Monday morning." PO Hummel did not independently recall § 87(2)(b) stating this, and did not recall there being any other conversation with § 87(2)(b) regarding filing a complaint.

Sgt Frank Arnedos, who was the desk sergeant at the time of the incident, was interviewed at the CCRB (Board Review 16). Sgt Arnedos did not hear § 87(2)(b) ask him or any other officer how or if he could file a complaint against officers. Sgt Arnedos stated that, had a civilian asked him these questions, he would have made an entry in the command log in regards, and would have notified IAB or the CCRB.

§ 87(2)(g)

Squad: \_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date